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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Nos. 43491, 43492 & 43563
Plaintiff-Respondent,)	
)	Bonner County Case Nos.
v.)	CR-2012-5344, CR-2015-1476 &
)	
JASON LEE WILLIAMS,)	Kootenai County Case No.
)	CR-2012-19280
Defendant-Appellant.)	
)	RESPONDENT'S BRIEF
)	

Issue

Has Williams failed to establish that the district court abused its discretion, either by revoking his probation in case numbers 43491 and 43563, or by imposing a unified sentence of five years, with two years fixed, upon his guilty plea to burglary in case number 43492?

Williams Has Failed To Establish That The District Court Abused Its Sentencing Discretion

On February 19, 2013, Williams pled guilty to six counts of grand theft in case number 43491 and the district court imposed concurrent unified sentences of five years,

with two years fixed, and retained jurisdiction. (R., Vol.I, pp.160-64.) Two days later, Williams pled guilty to burglary in case number 43563 and the district court imposed a concurrent unified sentence of six years, with three years fixed, and retained jurisdiction. (43563 R., pp.164-66.) Following the period of retained jurisdiction, the district court suspended Williams' sentences in both cases and placed him on supervised probation for three years. (R., Vol.I, pp.182-98; 43563 R., pp.173-77.)

In March 2015, Williams' probation officer filed a report of violation alleging Williams had violated the conditions of his probation by being arrested for theft and burglary and using methamphetamine on several occasions. (R., Vol.II, pp.242-43; 43563 R., pp.180-81.) Williams pled guilty to burglary in case number 43492 and admitted the allegations in case numbers 43491 and 43563. (R., Vol.II, pp.282-83; 43563 R., pp.409-13.) The district court revoked Williams' probation and ordered the underlying sentences executed in case numbers 43491 and 43563. (R., Vol.II, pp.285-87, 291-93; 43563 R., pp.205-07.) In case number 43492, the district court imposed a concurrent unified sentence of five years, with two years fixed. (R., Vol.II, pp.409-13.) Williams filed notices of appeal, timely from the judgment of conviction in case number 43492 and from the district court's orders revoking probation in case numbers 43491 and 43563. (R., Vol.II, pp.296-98, 418-20; 43563 R., pp.215-18.)

Williams asserts that the district court abused its discretion by imposing an excessive sentence in case number 43492, and by revoking his probation in case numbers 43491 and 43563, in light of his substance abuse, participation in the Good Samaritan Rehabilitation Program, and employment history. (Appellant's brief, pp.4-8.) The record supports the district court's decisions.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider "whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society." Drennen, 122 Idaho at 1022, 842 P.2d at 701.

The maximum prison sentence for burglary is 10 years, and the maximum prison sentence for grand theft is 14 years. I.C. §§ 18-1403, 2408(2)(a). The district court imposed an aggregate unified sentence of six years, with three years fixed, for two

counts of burglary and six counts of grand theft, which falls well within the statutory guidelines. (R., Vol.I, pp.160-64; R., Vol.II, pp.409-13; 43563 R., pp.164-66.) At the combined sentencing and probation violation disposition hearing for these cases, the district court articulated the correct legal standards applicable to its decisions and also set forth its reasons for imposing Williams' sentence in case number 43492 and for revoking his probation in case numbers 43491 and 43563. (7/21/15 Tr., p.10, L.6 – p.12, L.11.) The state submits that Williams has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing/disposition hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Williams' conviction and sentence in case number 43492 and the district court's orders revoking probation in case numbers 43491 and 43563.

DATED this 23rd day of March, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of March, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

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1 addicted to all that other stuff. It's not even a part
 2 of my life anymore. And through all the aftercare that
 3 I have and the MRT program that I've been doing, it's
 4 -- it's taught to me to take a look at all the
 5 relationships that I've hurt in my life.
 6 I've learned just how to humble myself and
 7 basically just put me -- put myself below anybody else.
 8 Because it says in the bible seeing your brother higher
 9 than yourself and just put my faith in the Lord with my
 10 whole heart is just amazing to see what he's been doing
 11 for me in my life. And I know -- I know that -- how
 12 this came about and how I ended up in the program to be
 13 able to change my life, it's a shame how it came about.
 14 But I'm -- I'm very thankful for what's happened in my
 15 life because it's made the man that I am today. And I
 16 feel like I've done exceptionally well. And I have a
 17 lot of -- a lot of goals set for myself in the future
 18 and they're not just -- they're actual goals that I
 19 want to accomplish and I've already began the steps
 20 that I can to accomplish those goals. And whatever
 21 decision you make here today, Your Honor, I know the
 22 Lord is with me and I deserve whatever it is.
 23 Thank you.
 24 THE COURT: Thank you, Mr. Williams.
 25 Mr. Taylor, for the record, any legal, factual

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1 people, that they'll never feel safe in their homes
 2 again, their possessions are destroyed, and you have to
 3 pay for that. And if you're talking about your faith
 4 in the Lord and those kinds of things, then people have
 5 to have consequences and there has to be retribution to
 6 some extent. And I just see no option given your
 7 record but to impose the sentences.
 8 You've had chance after chance. You've done
 9 two retain jurisdiction programs already. And I see
 10 people that are addicts every single day and we give
 11 people that are addicts chance -- try to give 'em
 12 chance after chance to rehabilitate. But in your case,
 13 you have to recognize the damage you do when you break
 14 into people's homes and over and over and over.
 15 There were originally three burglaries charged
 16 in Kootenai County in 2012. You pled guilty to six
 17 counts of burglary in Bonner County. And then this
 18 last crime where you pled to one, there was an
 19 allegation that there were at least twelve different
 20 victims, people that have been burglarized so --
 21 A. I didn't steal any of that.
 22 THE COURT: Well, Mr. -- we just talked about
 23 all these different counts that you agreed to pay
 24 restitution on.
 25 So I'm going to impose sentence in the 2012

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1 or equitable reason not to impose the sentence?
 2 MR. TAYLOR: No, Your Honor.
 3 THE COURT: Mr. Williams, I -- I hope that
 4 you're sincere in your faith. That faith may help
 5 sustain you.
 6 When a judge sentences a person, they have to
 7 look at a number of different things. They look at an
 8 element of punishment. Certainly when you have the
 9 number of crimes that you have, they look at deterring
 10 other people from committing these kinds of offenses.
 11 They look at rehabilitation. And,
 12 Mr. Williams, when you were sentenced in 2012 in the
 13 Kootenai County case, you were originally charged as a
 14 habitual offender. You already had two felony
 15 convictions when you committed burglaries in Kootenai
 16 County in 2012 and burglaries in Bonner County. And
 17 there -- what the Court looks at is victims. And I
 18 believe that you are sorry and I know you have
 19 addiction has been a huge problem for you throughout
 20 your life but these are real people whose homes were
 21 invaded. And then in 2015, we have the same thing over
 22 again. So I have victim after victim who you and
 23 Mr. McGuire this time go into people's homes, break
 24 into their homes, steal their things.
 25 Cases like that, there is real damage to real

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1 Kootenai case. That was the recommendation of the
 2 Presentence.
 3 I'm going to impose sentence in the 2012 Bonner
 4 County case. And on the new Bonner County case, I'm
 5 going to impose a unified sentence of five years: Two
 6 years fixed, three years indeterminate which means
 7 you'll have to serve at least two years. But then --
 8 and you can go through the therapeutic community there,
 9 get additional help for your addiction. And then once
 10 you paid your debt to society, then you have the chance
 11 to prove that you can really turn your life around.
 12 I'm going to impose on the new case a fine of
 13 -- no fine actually, just restitution. I'd like the
 14 victims to get some restitution.
 15 Court costs are \$245.50.
 16 Three hundred dollars to help repay some of the
 17 costs of the public defender.
 18 And then is there an agreement on \$3,800.00 on
 19 restitution or do we need a hearing?
 20 MR. TAYLOR: There is not an agreement yet,
 21 Your Honor.
 22 THE COURT: Mr. Greenbank, I'd ask that the
 23 State would file a request for a restitution hearing
 24 and if there's not a stipulation, then we can -- we'll
 25 set it for hearing. Mr. Williams could participate by